

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

NETWORK-1 TECHNOLOGIES, INC.

Plaintiff,

vs.

HEWLETT-PACKARD COMPANY AND
HEWLETT PACKARD ENTERPRISE
COMPANY

Defendants.

CASE NO. 6:13-cv-072-RWS

JURY TRIAL DEMANDED

**DEFENDANTS' RESPONSE TO NETWORK-1'S
BENCH BRIEF ON HP'S "POWERDSINE PROPOSAL" THEORY**

Mr. Ferguson's statement to the Court was that HP will not argue "[t]hat the IEEE or Mr. Dwelley were not concerned with the '930 patent because of the PowerDsine proposal and the fact that it was not presented to the IEEE." 11/10/17 PM Tr. at 113:18-23. Consistent with Mr. Ferguson's statement, HP will not make that causal argument.

HP may well make reference to the unobjected-to testimony from Mr. Dwelley in support of other arguments. To the extent that Network-1's brief suggests that HP otherwise "narrowed" the scope of arguments it may make about the evidence in the record, there is no basis for such a suggestion. *See* Network-1 Br. at 2 (suggesting that Network-1 would seek relief "if HP's closing goes beyond the narrow argument it told the Court it would present[.]"). Mr. Ferguson did not tell the Court what arguments HP would present, but rather indicated one limited argument that HP would not present.

Following Mr. Ferguson's statement about what HP would not argue, counsel for Network-1 stated: "Your Honor, we're going to drop this issue. Let's proceed with the rest of the case." 11/10/17 PM Tr. at 117:10-11.

Other than Mr. Ferguson's statement referenced above, there is no limitation on the otherwise proper arguments HP can make in closing. Network-1 did not object to Mr. Dwelley's testimony at the time it was given, at a time when HP could have addressed the issue with the witness on the stand. And Network-1 explicitly waived relief beyond enforcing the representation Mr. Ferguson made when Mr. Eichmann said Network-1 was "going to drop this issue."

November 11, 2017

Respectfully submitted,

/s/ Mark E. Ferguson

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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

The undersigned certifies all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 11th day of November, 2017.

/s/ Mark E. Ferguson
Jennifer H. Doan